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7 **IN THE UNITED STATES DISTRICT COURT FOR**  
8 **THE WESTERN DISTRICT OF WASHINGTON**  
9 **AT TACOMA**

10 Victor FONSECA,

NO.

11  
12 Plaintiff,

13 v.

14 United States Immigration and Customs  
15 Enforcement; Tony PHAM and Tae  
16 JOHNSON, Acting Director and Deputy  
17 Director of U.S. Immigration and  
18 Customs Enforcement; U.S. Department  
19 of Homeland Security; Chad WOLF,  
20 Secretary of the U.S. Department of  
21 Homeland Security; Nathalie ASHER,  
22 Director of the Seattle Field Office of the  
23 United States Immigration and Customs  
24 Enforcement; and Bryan WILCOX,  
25 Deputy Field Office Director for the  
26 Seattle Field Office of the United States  
Immigration and Customs Enforcement;  
Sheri MALAKHOVA, Clinical Director for  
ICE Health Services Corps at Northwest  
ICE Processing Center,

27 Defendants.  
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**COMPLAINT FOR INJUNCTIVE AND  
DECLARATORY RELIEF**

**I – INTRODUCTION**

1.1 Defendants DHS, ICE, Pham, Johnson, Asher, Wolf, Wilcox, and Malakhova are detaining Plaintiff indefinitely at the TIPC, under the custody of Defendant Immigration Customs Enforcement (“ICE”).

1.2 Plaintiff, who is without any economic or social power, sought to exercise his First Amendment rights of free speech to reach the public and the right to petition the government about U.S. immigration policies and the conditions of his forced detention at the Tacoma ICE Processing Center (“TIPC”).

1.3 ICE, and its parent agency, Defendant U.S. Department of Homeland Security (“DHS”), in retaliation against Plaintiff for the hunger strike and exercise of his First Amendment rights, plan to force feed Plaintiff. ICE has followed through on similar threats in the past and obtained at least six orders in sealed cases in the Western District of Washington, to force feed detained people.

1.4 Force feeding is a violent act that brings disorder to an otherwise peaceful and orderly exercise of First Amendment rights, violative of Plaintiff’s Fifth Amendment right to refuse medical treatment, and designed to deter Plaintiff and other detained people from exercising their First Amendment rights.

**II – JURISDICTION**

This Court has subject-matter jurisdiction over this matter under 28 U.S.C. § 1331 (federal question), 5 U.S.C. § 702 (waiver of sovereign immunity), and 28 U.S.C. § 1343 (original jurisdiction).

**III – VENUE**

Venue is proper in the Western District of Washington under 28 U.S.C. §§ 1391(b) and (e) because a substantial part of the events and omissions giving rise to Plaintiff’s claims occurred, and continue occur, in this District.

**IV – PARTIES**

4.1 Plaintiff Victor Fonseca is being held in custody at the TIPC in Tacoma, Washington, by ICE.

1           4.2     Defendant ICE is a federal law enforcement agency within the  
2 Department of Homeland Security ("DHS"). ICE is responsible for the  
3 administration and enforcement of immigration laws, including detention,  
4 incarceration, and removal of immigrants. ICE discharges its responsibility for  
5 incarceration of immigrants by (1) promulgating detention standards to be  
6 followed in the facilities in which immigrants are being held pending removal  
7 hearings, and (2) contracting with the government entities and private  
8 corporations that operate detention facilities, including the TIPC. Enforcement  
9 and Removal Operations ("ERO"), a division of ICE, manages and oversees the  
10 immigration detention system. ICE contracts with the GEO Group, Inc., to carry  
11 out its directives at the TIPC.

12           4.3     Defendant Tae Johnson is Deputy Director of ICE and Defendant  
13 Tony Pham is Acting Director of ICE. As Deputy Director and Acting Director,  
14 Defendants Johnson and Pham are responsible for ICE's policies, practices, and  
15 procedures, including those relating to the detention and treatment of immigrants  
16 during their removal procedures.

17           4.4     Defendant U.S. Department of Homeland Security is the federal  
18 department that exercises authority and oversight over Defendant ICE.

19           4.5     Defendant Chad Wolf is the Secretary and highest-ranking member  
20 of DHS. As Secretary of DHS, Defendant Wolf is responsible for DHS's policies,  
21 practices, and procedures and exercises authority and oversight over ICE.

22           4.6     Defendant Nathalie Asher is Field Office Director for the Seattle  
23 Field Office of ICE. The Seattle Field Office is responsible for carrying out ICE's  
24 immigration detention and removal operations in Alaska, Oregon, and  
25 Washington State. As Director, Defendant Asher oversees the Seattle Field  
26 Office's functions and implementations of its detention standards.

27           4.7     Defendant Bryan Wilcox is the Deputy Field Office Director for the  
28 Seattle Field Office of ICE.

1           4.8     As Field Office Director and Deputy Field Office Director,  
2 Defendants Asher and Wilcox oversee the Seattle Field Office's function and  
3 implementation of ICE detention standards at the TIPC.

4           4.9     Defendant Sheri Malakhova is the Clinical Director for ICE Health  
5 Services Corps at TIPC. As Clinical Director, Defendant Malakhova is employed  
6 by ICE and is responsible for making decisions regarding Plaintiff and healthcare  
7 protocols at the TIPC.

8           4.10    Defendants Pham, Johnson, Wolf, Asher, Wilcox, and Malakhova  
9 are sued only in their official capacities.

10                                   **V – FACTS**

11           5.1     Defendants DHS, ICE, Pham, Johnson, Asher, Wolf, and Wilcox  
12 are detaining Victor Fonseca at TIPC, where at least seven guards have been  
13 infected with COVID-19 this year.

14           5.2     Victor Fonseca is a 39-year-old man seeking asylum in the U.S.,  
15 from Venezuela, and has been detained at TIPC, under the custody of ICE since  
16 July 26, 2019.

17           5.3     Since Venezuela does not accept people deported from the U.S.,  
18 Defendants plan to detain him indefinitely.

19           5.4     Victor Fonseca's immune system is compromised, and he is not  
20 able to effectively fend off viral illnesses. Continued detention by Defendants  
21 could result in Mr. Fonseca's death.

22           5.5     Defendants have failed to provide necessary medical treatment to  
23 Mr. Fonseca during their detention of him.

24           5.6     To protest Defendants' inhumane treatment and indefinite detention  
25 by Defendants, Mr. Fonseca declared a hunger strike on November 27, 2020.

26           5.7     The hunger strike is peaceful and is not disrupting management of  
27 the detention facility.

28           5.8     In retaliation for Mr. Fonseca's engaging in the hunger, Defendants  
29 have bullied, intimidated, threatened, and have plans to force feed Mr. Fonseca.  
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1           5.9 Force feeding violates the right to bodily integrity and the right to  
2 determine medical treatment for oneself.

3           5.10 Defendants' actions chill and deter Victor Fonseca's and others'  
4 exercise of First Amendment rights and interfere with the American people's  
5 ability to hear his story and effectively participate democratically in their  
6 government.

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8 **VI – FIRST CAUSE OF ACTION: VIOLATION OF FREEDOM OF EXPRESSION**

9           6.1 Plaintiff incorporates Paragraphs 1.1 – 5.10 (above) herein by  
10 reference.

11           6.2 The First Amendment guarantees Plaintiff the right of freedom of  
12 speech and freedom of expression. Plaintiff exercised his right to these  
13 protected freedoms by engaging in a hunger strike to express his views about  
14 national immigration policies and how he was being treated at the TIPC.

15           6.3 Defendants violated Plaintiff's right of freedom of speech and  
16 expression by threatening force feeding in retaliation for his free speech  
17 activities.

18           6.4 Force feeding Plaintiff will violate Plaintiff's right of freedom of  
19 speech and freedom of expression.

20           6.5 Defendants actions and threatened actions chill, and will chill,  
21 Plaintiff's and others' right to freedom of speech and expression.

22           6.6 Defendants actions and threatened actions do not reasonably  
23 advance a legitimate institutional goal.

24           6.7 Plaintiff has suffered, and continues to suffer, irreparable injuries as  
25 a result of Defendants' policies, practices, and omissions and is entitled to  
26 injunctive relief to avoid further injury.

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28 **VII – SECOND CAUSE OF ACTION: VIOLATION OF RIGHT TO PETITION**  
29 **THE GOVERNMENT FOR REDRESS OF GRIEVANCES**  
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1           7.1 Plaintiff incorporate Paragraphs 1.1 – 6.7 (above) herein by  
2 reference.

3           7.2 The First Amendment guarantees Plaintiff the right to petition the  
4 government for redress of grievances.

5           7.3 Defendants violated Plaintiff's right to petition the government by  
6 threatening force feeding in retaliation for his attempts to bring his grievances to  
7 light.

8           7.4 Defendants' actions and threatened actions chill, and will chill,  
9 Plaintiffs' and others' right to freedom of speech and expression.

10          7.5 Defendants' actions and threatened actions do not reasonably  
11 advance a legitimate institutional goal.

12          7.6 Plaintiff suffers, has and will suffer, irreparable injuries as a result of  
13 Defendants' policies, practices, and omissions, and are entitled to injunctive relief  
14 to avoid further injury.

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16                   **VIII – THIRD CAUSE OF ACTION: VIOLATION OF THE**  
17                   **RIGHT TO BODILY INTEGRITY**

18          8.1 Plaintiff incorporates Paragraphs 1.1 – 7.6 (above) herein by  
19 reference.

20          8.2 The Fifth Amendment grants Plaintiff a liberty interest in bodily  
21 integrity, the right to determine what medical treatment shall be accepted or  
22 refused.

23          8.3 Defendants actions violate Plaintiff's liberty interest in bodily  
24 integrity, the right to determine what medical treatment shall be accepted or  
25 refused, and right to petition the government by force feeding him.

26          8.4 Defendants' actions and threatened actions do not reasonably  
27 advance a legitimate institutional goal.

28          8.5 Plaintiff will suffer irreparable injuries as a result of Defendants'  
29 actions and is entitled to injunctive relief to avoid further injury.  
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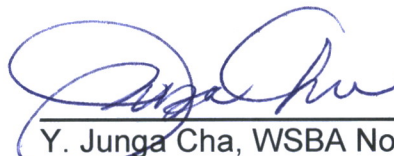
**PRAYER FOR RELIEF**

WHEREFORE Plaintiff requests that the Court:

1. Issue a temporary restraining order and preliminary relief enjoining Defendants, their subordinates, agents, employees, and all others acting in concert with them, from force feeding or threatening to force feed Plaintiff;
2. Issue a permanent injunction prohibiting Defendants, their subordinates, agents, employees, and all others acting in concert with them from force feeding or threatening to force feed Plaintiff;
3. Issue a permanent injunction prohibiting Defendants, their subordinates, agents, employees, and all others acting in concert with them from taking adverse action actions (including force feeding, segregation, separation, and isolation) against Plaintiff, based upon Plaintiff engaging in First Amendment activities, specifically including hunger striking;
4. Issue an order declaring the rights and obligations of the parties, including that Defendants' policies, practices, acts and omissions described in this Complaint violate Plaintiff's rights under the U.S. Constitution; and
5. Grant such further relief as the Court deems just and proper.

Dated this 30 of December, 2020.

Cha & Alexander Law Firm, P.S.



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